

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-10989
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT SEPTEMBER 28, 2007 THOMAS K. KAHN CLERK

D. C. Docket No. 06-00185-CR-5-RS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OMAR SILVA-NAVA,
a.k.a. Rene Rodriguez,
a.k.a. John Doe,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(September 28, 2007)

Before ANDERSON, BARKETT and PRYOR, Circuit Judges.

PER CURIAM:

Omar Silva-Nava appeals his conviction for false impersonation of a United States citizen. See 18 U.S.C. § 911. Silva-Nava argues for the first time on appeal that section 911 violates the First Amendment. We affirm.

Where no timely objection was made in the district court, we review for plain error. United States v. Rodriguez, 398 F.3d 1291, 1298 (11th Cir. 2005). Plain error consists of (1) error (2) that is plain (3) and affects substantial rights. United States v. Moriarty, 429 F.3d 1012, 1019 (11th Cir. 2005). “[A]n error cannot meet the ‘plain’ requirement of the plain error rule if it is not ‘clear under current law.’” United States v. White, 416 F.3d 1313, 1319 (11th Cir. 2005) (citation omitted).

Siva-Nava contends that the district court plainly erred when it approved his conviction for false impersonation of a United States citizen because section 911 is overbroad and unconstitutional on its face. The challenged language of section 911 provides, “Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.” 18 U.S.C. § 911. Silva-Nova’s argument fails.

Neither this Court nor the Supreme Court has held that section 911 is overbroad. Our sister circuits that have addressed overbreadth challenges to the statutory language of section 911 have uniformly rejected the challenges. See

United States v. Esparza-Ponce, 193 F.3d 1133, 1137 (9th Cir. 1999); United States v. Achtner, 144 F.2d 49, 52 (2d Cir. 1944) (rejecting challenge to predecessor statute, 8 U.S.C. § 746(a)(18)). The district court did not plainly err.

Silva-Nava's conviction is

AFFIRMED.